

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

SYNQOR, INC.,	:	
	:	
Plaintiff,	:	2:14-CV-286-MHS-CMC
	:	
v.	:	
	:	
CISCO SYSTEMS, INC.,	:	
	:	
Defendant.	:	

PARTIAL SUMMARY JUDGMENT MOTIONS HEARING

*** PORTIONS OF THIS HEARING ARE CONFIDENTIAL ***

On the 14th day of August, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge Caroline Craven, Judge presiding, Texarkana, Bowie County, Texas.

Proceedings reported by computerized stenographic method.

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1 that's all right, your Honor.

2 THE COURT: Sure.

3 MR. HATCHER: They are different structures. They
4 are different control chips, if nothing us. What I put
5 on the screen for you, your Honor, was the data sheet
6 for the control chip in the nonisolated converter.
7 That is a different than the control chip in the
8 accused replacement non-Vicor CPNs. It's a different
9 structure. Thanks.

10 THE COURT: All right. So that takes care of 93,
11 94, 95; would that be correct?

12 MR. GARDNER: Yes, your Honor.

13 THE COURT: Okay. I show that you guys wanted to
14 hear Cisco's motion No. 97 next. Who will present
15 that?

16 MR. LEE: I will, your Honor. Your Honor, this a
17 tab -- the slides are tab two in the notebook I
18 provided to you. And let me say this: We know we've
19 inundated you with summary judgment motions. We're not
20 asking to file anymore summary judgment motions. I can
21 promise you that. And we appreciate the efforts the
22 Court has taken to help us narrow the issues that might
23 get tried here.

24 This motion, actually, I think, is quite simple
25 but quite important. After your Honor's report of

1 recommendation on the importation issue, this motion
2 implicates more than 50 percent of the remaining
3 damages. So it's large, in terms of magnitude and
4 amount but, I think, simple in terms of the focus. Let
5 me say why I think it's simpler. There is no dispute
6 that there were two prior judgments rolling around
7 \$100 million. There is no dispute that both judgments
8 have been paid. One's on appeal but we've paid a
9 judgment. We have not appealed but SynQor has, so both
10 judgments have been paid. There's no dispute that you
11 can't get paid twice for the same thing, so the only
12 question is, what did you get paid for? And we say you
13 got paid for all of the bus converters that were an
14 issue and they say, no, we got paid for some, unit by
15 unit.

16 And I think, your Honor, while there is a lot of
17 dancing around on the law, there's really not much in
18 dispute. There is a document called exhaustion that
19 the federal circuit recognizes. We don't dispute it as
20 an affirmative defense. We've pled it as an
21 affirmative defense. And we state that the undisputed
22 facts demonstrate that there's been exhaustion. The
23 question is as to what and really, your Honor, the
24 question becomes is it all or is it just some unit by
25 unit? I think, that really captures the question. And

1 this is a place where your Honor is not going to have
2 take our word for it or my word for it. All we have to
3 do is take their words from the first cases and your
4 Honor will see "all" was their word and that is what
5 was done.

6 So if I go to our slides to Slide 2. In the first
7 case, their liability testimony, your Honor, as opposed
8 from the damages testimony. They had two experts,
9 Dr. Leeb and Dr. Reed. Dr. Leeb was the person who was
10 establishing infringement, the liability aspect. And
11 when he gave his testimony, he said what infringes,
12 it's all the products on Slides 18 and 19, by way of
13 example. To show you what they were, your Honor, if I
14 could have our Slide 3. This is their Slide 18 from
15 the presentation to the jury. Now, your Honor will
16 notice that it's product by product. There is nothing
17 here about unit by unit. And if I flip back a slide.
18 May if I approach, your Honor?

19 THE COURT: Yes.

20 MR. LEE: Again, as I said, the word is all of the
21 known end products. That's their word. That's what
22 they showed on Slide 18 to the jury. That's what they
23 showed on Slide 19 to the jury.

24 And for each supplier, your Honor, since Cisco
25 wasn't a party to that case, the first case, they said

1 all known end products, not unit by unit, infringe.
2 That was their liability testimony. Dr. Leeb was then
3 followed by Dr. Reed, who is the damages expert but
4 there are two critical aspects of Dr. Reed's testimony.
5 First, on the question of what infringe is, he relied
6 upon Dr. Leeb. That's not unusual at all. The damages
7 guy is the technical person, so if I turn to our Slide
8 5, he admitted, quite honestly and correctly, that he
9 relies upon technical expert, Dr. Leeb, for his
10 analysis.

11 What did he rely upon? Your Honor, if I go to our
12 Slide No. 6, in his April 11th, 2014 report in this
13 case, same Dr. Reed, same one who testified that he
14 relied upon Dr. Leeb in the first case, was explicit in
15 what he'd done. And what he said is: "SynQor's
16 technical expert, Dr. Leeb, established at the trial,
17 and the jury agreed, that all those end products used
18 the bus converters in ways that infringe SynQor's
19 patents.

20 Now, the "all" that he's referring to, your Honor,
21 is the, approximately, 30 external part numbers that
22 your Honor has seen to refer to as CPNs. Again, not
23 Cisco's words, SynQor's words, "all" of those products.

24 Now, as your Honor knows from the many patent
25 cases you've seen, once you have had a liability

1 expert, who testifies that there is infringement of a
2 universal product, all those end products, someone has
3 to then quantify what are the damages. Hypothetical
4 negotiation of the products. Mr. Reed testified again
5 correctly, that there are multiple ways that he could
6 have done this.

7 If I go to our Slide 7, he says two important
8 things and I've only highlighted the second but let me
9 get the first. Given how much of SynQor's response is
10 focused on Cisco's information, whether it was
11 reliable, he says -- this was back in 2010, your Honor,
12 before the first trial. Cisco's information appears
13 incomplete. Cisco wasn't a party. Cisco was
14 responding to a subpoena. He says it's incomplete, so
15 there are alternative ways for me to compute the
16 damages, a hypothetical negotiation, what the
17 hypothetical negotiation would produce more false
18 profits. He said, I could have used suppliers data,
19 the data that the suppliers had. I could have actually
20 used the Cisco data but it's incomplete. I could have
21 used SynQor's sales projections, my own client. He
22 said that there were multiple ways to do it.

23 So your Honor, if we just stop here for a second,
24 what we have is a circumstance where the liability
25 expert says all of these products infringe. The

1 damages expert has said twice now, I rely upon the
2 liability expert and, four years later, looking back
3 retrospectively, he testified all these products
4 infringe. So now, I'm going to try to quantify the
5 damages and I have multiple ways to do it. And I'm not
6 going to rely upon Cisco's data unit by unit, sale by
7 sale because it's incomplete, so I'm going to come up
8 with a different way.

9 So if I can turn to our Slide 8, your Honor, here
10 is -- here are some key aspects of his "different way".
11 He used Cisco's U.S. and worldwide financial data. He
12 didn't use manufacturing data. He didn't use shipping
13 data. He used data only available for a certain period
14 of time, so he had to extrapolate. And he used average
15 rates for periods for each of the different products.
16 And when that material wasn't available, he used
17 company-wide numbers. But I don't think, your Honor,
18 the details of this are as important as the fact that
19 he said I have multiple ways of doing it. Here's the
20 way I'm doing it. I'm going to rely on worldwide data,
21 not U.S. data. I'm going to extrapolate where I need
22 to extrapolate. And where there is information that is
23 not available, I'm going to use company-wide
24 importation rate 49 percent. So he said I can't use
25 the Cisco manufacturing data. I can't use the Cisco

1 shipping data, it's incomplete, so here's the way I'm
2 going to estimate what the damages are. He did. The
3 jury accepted his testimony. As he said himself, it
4 covered all of the products. While SynQor now would
5 like to walk away from the "all" products, what Judge
6 Ward and Judge Schneider did in prior cases, the way
7 they articulated it, we think, is instructive.

8 If you go to Slide No. 9, Judge Ward phrased it
9 this way: "The damages model presented to the jury was
10 based on sales made, at least through October 31, 2010.
11 This is consistent, your Honor, with Dr. Reed's
12 testimony that everything a supplier sold in that
13 period of time infringed. It was consistent with the
14 way that Dr. Reed then characterized Dr. Leeb's
15 testimony and this is how Judge Ward articulated it,
16 sales made during periods of time. Not unit by unit,
17 not some of the sales, not some that you have to
18 improve. And he did so for the supplemental damages as
19 well. Judge Schneider, if I turn to page 10 in the
20 '444 case, he adopted the same protocol and framework
21 of Judge Ward and he did it on the basis of time
22 periods. Again, not some of the bus converters sold
23 during that time period, not unit by unit but
24 everything sold in that period.

25 Now, SynQor's response, your Honor, in the briefs

1 and this is in their sur-reply on page 3, note 1, I
2 think, is pretty revealing. Their answer is that these
3 statements by Judge Ward and Judge Schneider are a
4 shorthand that don't really reveal what they were
5 doing. Now, I don't know how you do that if you're not
6 the author of the opinion but, I think, Judge Ward and
7 Judge Schneider were both pretty clear on what they
8 were doing. It wasn't a shorthand. The reason they
9 had to characterize it that way is this: Judge Ward
10 and Judge Schneider were characterizing it 100 percent
11 accurately, based upon the evidence that they saw and
12 the arguments that SynQor made. The only way you can
13 back away from that and go unit by unit is to try to
14 characterize this as the two federal judges not quite
15 meaning what they say in the words.

16 There is a reason that Judge Ward and Judge
17 Schneider did this because, your Honor, SynQor actually
18 opposed a unit by unit damage analysis in the first
19 cases. They opposed it because of this incompleteness
20 in the records that Dr. Reed had mentioned. And I
21 think, I can show you their opposition to the very
22 method that they now claim to use.

23 If I go to Slide 11 and I go back to the opening
24 statement in the '444 case, SynQor says to the Court,
25 "They," that's the defendants, "will ask that damages

1 be limited to the units they admit went into the United
2 States." So the defendants, the suppliers, your Honor,
3 in that case, are saying, let's do it unit by unit.

4 Slide 12, if we could. SynQor would never agree
5 to that. This goes back to this question of the
6 incompleteness of Cisco's records. But the opening in
7 the '444 case says SynQor would never agree to that.
8 So we have the suppliers saying let's go unit by unit,
9 SynQor saying, we would never agree to that, based on
10 Cisco's own reporting. And as a result, I go to Slide
11 13, your Honor, that's why Mr. Reed proposed the damage
12 model that multiplied per unit price by expected
13 importation percentages, rather than unit by unit.

14 And critically important, your Honor, to hold
15 SynQor to what I said before, if I go to Slide 14,
16 SynQor said something that we agree with completely.
17 The hypothetical negotiation is one that happens just
18 before the infringement begins, based upon the party's
19 expectations at the time of the negotiation. That's
20 what Mr. Reed tried to capture and he didn't do it unit
21 by unit.

22 If -- your Honor, I looked for an analogy that
23 would help me understand what they are trying to say
24 and the best I could come up and no analogy is as
25 perfect as this. If you assume that, you know, an

1 employee has served -- say, a salesperson working on a
2 commission. He or she has been terminated. He sues
3 for wrongful termination. He establishes liability.
4 He says I should have been able to work another year.
5 He has several different options for computing damages.
6 You could project the sales that he might make. He
7 could project the sales of the company and divide by
8 the number of sales. He could use the sales from his
9 last pay period, he could use the sales this last
10 period. To use the analogy here, he takes total past
11 sales as a rough estimate divided by the number of
12 salespeople and says, that's about why we got it and he
13 gets an award. It turns out that the person who got
14 his job afterwards actually makes more sales than he
15 projected. He can't come back and say no, I'm entitled
16 to more now. There's one fact that I'm 100 percent
17 certain about and I'm 100 percent sure and they will
18 agree with me at least on this one fact. If the actual
19 importation rate had come in lower than they used, they
20 wouldn't have called us up and said, we have a check
21 for you. We asked for too much. I promise you that
22 they wouldn't do that. Why? Because this is their
23 estimation of damages. So the question becomes what's
24 the consequence of this and we say the consequence of
25 this is we can enter the all or some question as it's

1 all.

2 If I go to Slide 15. Mr. Reed, says, "I have
3 alternative calculations" -- I have alternative
4 calculations for what, Slide 16, Dr. Leeb tells us it's
5 alternative calculations for all of the known products.
6 And you know, your Honor, when you trying to thread a
7 needle to come up with a different damages theory that
8 is one that you've basically imposed before, it's hard
9 work. And I think, just how hard the work is, is
10 demonstrated by Slide 17, which is actually their
11 sur-reply in this case. Literally, just weeks ago.
12 They accuse us of ignoring the fact that the '497 jury
13 verdict specifically asked the jury to determine the
14 amount of infringement caused by the defendants. That
15 is the supplier. Those are the folks that sold all of
16 those components. We suggest, your Honor, if you agree
17 with us, that they asked to be compensated for all
18 during a period of time, then the ma near case, the
19 life span cases say it is exhausted.

20 If your Honor needed an objective fact that would
21 demonstrate that, really, there was exhaustion and the
22 theory that SynQor is offering now, is an effort to
23 basically rewrite the record and to adopt a model that
24 they have actually checked in the opening judge
25 Schneider, here is the best indication. In the prior

1 cases, SynQor focused on sales to Cisco. Today, in
2 this case, they are focusing on sales by Cisco. And
3 the Court may ask yourself the same question we asked
4 ourself, why? You know, if you're just trying to get
5 compensation for things that weren't covered before,
6 why are you doing that? And I think, I can demonstrate
7 to you very quickly just why. Mr. Reed was deposed in
8 this case -- if I go to Slide No. 18. And he was asked
9 this: Let's say that there was -- and I can summarize
10 this for your Honor, with the highlight on the board.
11 Let's say that there was a converter sold to Cisco on
12 July 20, 2011. Would that have been one of the ones
13 that was sold to Cisco in the '497 case? He said yes.
14 Now, let's say it sits in Cisco's inventory and it gets
15 sold after January 30th. Are you not counting that
16 same converter again? He said yes. They have to
17 change the model to address the fact that they are
18 trying to come up with a way to navigate what they said
19 before.

20 So your Honor, a very quick animation. If I go to
21 Slide 19, this is what they -- this summarizes, I
22 think, what I've tried to describe today. When they
23 were suing the suppliers, in both the '497 and '444
24 cases, which covered the period from July of 2006 to
25 April of 2011, they said all of the products infringe

1 and then, they used worldwide sales importation rate,
2 royalty and they obtained awards of \$100 million and
3 they say they have been paid.

4 Now, if I go to Slide 20, they are saying that
5 there are units that were sold by Cisco to its
6 customers and we want another \$23 million. That's why,
7 your Honor, it remains about the remaining 23 million.
8 The problem with that is what we demonstrate on Slide
9 21. If you had a bus converter sold to Cisco in this
10 period but then not sold by Cisco till the second
11 period, they want to be compensated twice. And the law
12 doesn't allow you to collect twice. So your Honor,
13 I know that there's been some complexity to the motions
14 but in this case, as I said, to reiterate, there's no
15 dispute, there were two prior judgments. There's no
16 dispute that they were paid. There's no dispute that
17 both judges described them as covering time periods.
18 There's no dispute that they described them as "all
19 products". There's no dispute that they rejected and
20 opposed a unit by unit analysis. If the Court accepts
21 their word, which is they were covering all, not some,
22 then, they are exhausted to April 11th, 2011 and that
23 has a substantial narrowing effect of the case.

24 One last point, your Honor, there are 15,000 old
25 CPNs that were sold by Aztec and others that are not

1 part of this motion. Your Honor, doesn't need to sort
2 through this. An order that said anything -- all units
3 that were covered by the '497 and '444 time period are
4 exhausted, would substantially narrow the case. My bet
5 is those few thousands, we could deal with, even as
6 part of the trial. Thank you, your Honor.

7 THE COURT: Thank you.

8 MR. REIN: Your Honor, Stephanie Koh will argue
9 for SynQor.

10 MS. KOH: Your Honor, may I approach with some
11 slides?

12 THE COURT: You may.

13 MS. KOH: Good morning, your Honor. Stephanie Koh
14 for SynQor. On this motion, the Court needs to
15 determines to what degree there has been exhaustion or
16 an implied license that limits damages. And the
17 keyword there is "limits". I think, that Mr. Lee and
18 Cisco would agree. Regardless of what the ruling is,
19 other than the quantification of damages, the issues in
20 this case will remain the same. The exhaustion and
21 implied license issues only apply to what the parties
22 refer to as the old CPNs. And the old CPNs will be at
23 issue in the case, no matter what the Court rules on
24 this motion because even Cisco does not contend that
25 this defense would take the old CPNs out of the case

1 reason for denying Cisco's motion. Thank you.

2 THE COURT: Thank you. Is it going to be long?
3 Would this be a good time to take a break?

4 MR. LEE: No. I can be relatively brief, your
5 Honor. Then we'll be halfway through, which might be
6 good.

7 THE COURT: Okay.

8 MR. LEE: Let me do it this way. I think I can do
9 it quickly. The allegation of this case is completely
10 unprecedented in there's no case citation. All the
11 Court needs to do is read the cases and the principles
12 of exhaustion to know that's not true. But actually,
13 you don't even need to do that, your Honor. You can
14 just actually take their own argument. They concede
15 that any products that were the subject to the damage
16 award are exhausted. They concede that, right? They
17 claim that there are more but they concede that the
18 reason there's not a case that deals precisely with the
19 circumstances, it's a proposition that is so obvious
20 that they don't even contest this.

21 Point No. 2, your Honor, is this and I think this
22 actually is, respectfully, just an effort to send us
23 off on a wild goose chase. There's this constant
24 reference to not being compensated for Cisco's direct
25 infringement. Your Honor, we're not asking you to find

1 exhaustion as to the Vicor parts. We're not asking
2 your Honor to find exhaustion as to the new parts.
3 We're not asking your Honor to find exhaustion as to
4 those 15,000 parts. Exhaustion applies to the parts
5 sold by the suppliers in the '497 and '444 case. And
6 if you've collected from them, as the indirect
7 infringer, you can't collect twice. So this constant
8 drum beat about Cisco's direct infringement, we are
9 seeking to exhaust only those that were based upon the
10 suppliers in the first cases, where the predicate act
11 was Cisco's direct infringement and no more.

12 And on this issue and, I think, your Honor, there
13 was no dispute that the issue was at the first two
14 trials, was it all or some units that were at issue.
15 And if I could have our Slide No. 6. When your Honor
16 considers how this motion should be decided, if you
17 would consider two critical slides, I think, it'll help
18 us get to where we need to be. This is their expert.
19 This is their damages expert. This is years after the
20 first verdict. And when all of the issues in play here
21 have been set forth in great detail. And he says that
22 Dr. Leeb established that all those end products, all,
23 infringed and he was correct. And this unit by unit
24 stuff -- argument that your Honor is hearing today,
25 Mr. Reed didn't accept because it's not true. And in

1 fact, the reason he didn't accept it, if I go to Slide
2 11, is because they said they are not going to do it
3 unit by unit. They said at the '444 case, that the
4 defendants asked to be unit by unit. Go to Slide 12.
5 They said we're not going to do it that way. So the
6 entire, I'd say, 50 percent of the argument that was
7 just made, that urges, your Honor, that they did it
8 unit by unit, this is exactly what they opposed doing.

9 Now, there was a lot about the incompleteness of
10 Cisco's records and I think, I wrote this down. It's
11 now known that the records were incomplete. Your
12 Honor, if I go back to Slide 7, they said four years
13 ago that the records were incomplete. Now, they could
14 have moved to compel. They could have sought the
15 records to be more complete. Could have reopened the
16 judgment. There's lots of things they could have done,
17 right, but they knew, the idea that they know they were
18 incomplete, they knew they were incomplete then but
19 they wanted to get compensation for, in their words,
20 all of the infringement. So the idea that it's now
21 known they were incomplete and that should be a
22 different result is not right. And I was listening
23 carefully to see that if they would say that the
24 numbers come up the other way and there had been fewer
25 shipments by Cisco, whether they would have reimbursed

1 us, the answer is certainly no.

2 Now, the very first part of the their argument,
3 your Honor, was whether this would narrow the case. It
4 would in terms of dollar allotted. But hear is the
5 other questions, your Honor. Someone has to determine
6 what units were in and what units were out. That's one
7 of the tribal issues they suggest, your Honor. So they
8 are suggesting that the next jury figure out what units
9 were in and what units were out and then compensates
10 for units out. Is the next jury supposed to look at
11 Judge Ward's statement and decide where it was a
12 shorthand? Are they supposed to look at Judge
13 Schneider's statement and decide whether it was a
14 shorthand? Are they supposed to look back at what
15 Mr. Reed said? No. That's why this is a legal issue.
16 And the legal issue, I think, is simple. Did they seek
17 all or some? And their own words said that they sought
18 all. Their own words said that they were not seeking
19 some. And they are now asking, your Honor, to permit
20 them to pursue the theory that they actually rejected
21 in the '444 case and to require the jury to figure out
22 which units were in and which units were out on this
23 record. That's not an issue for the jury. That's an
24 issue for the Court.

25 And it is, there is exhaustion laws clear. I say

1 it parenthetically, the reason the implied license
2 issue has come in is because it has nothing to do with
3 this motion. It's an effort to move up the
4 hypothetical negotiation date. Exhaustion is the right
5 doctrine. When your Honor enters the final judgment in
6 the case, the judgment's paid, that's it for that was
7 which was at issue. This is a circumstance where they
8 made a decision to see decide to sue our suppliers
9 first, to not have Cisco in the case, where they knew
10 that our records were, in their words, incomplete and
11 to adopt a model to compensate them for all the
12 infringement.

13 Now, let me suggest this final word, your Honor,
14 because there's -- the one thing I'm pretty sure now is
15 we're not, today, trying to adjudicate the reasons that
16 Cisco's records were incomplete. But if you remember
17 from Mr. Hatcher's presentation, he described how these
18 bus converters were part of a bigger printed circuit
19 boards that were part of these bigger products. Cisco
20 sells the bigger products and its system is set up to
21 sell and track the bigger products. It's not set up,
22 necessarily, to track which particular bus converter on
23 this particular printed circuit board made it into this
24 router or receiver. And when we got to the second go
25 around, we went back and reconstructed as best we

1 could. But in some sense, it doesn't matter. The most
2 critical fact is this: They knew that non-party Cisco
3 -- non-party because they chose to sue our suppliers.
4 They made an issue of our indemnity in the first case,
5 so the jury knew we were there. They decided to
6 basically seek compensation for it. All of the
7 converters sold by those defendants. They adopted a
8 model to compensate them for all the converters sold by
9 those defendants. And all we're saying is, on those
10 facts, you're exhausted as to all the converters sold
11 by those suppliers. Thank you, your Honor.

12 THE COURT: You're welcome.

13 MS. KOH: Very briefly, if I could, your Honor.
14 Cisco keeps contending that SynQor sought compensation
15 on all the units. We did not, did not seek
16 compensation on all of the units. We were indisputably
17 not compensated on approximately 50 percent of the
18 units. There is no basis for saying that we were
19 compensated on all of the worldwide sales, none. We
20 were not compensated on all of the sales.

21 Mr. Lee again talked about the end products used
22 bus converters in a way that infringed. All of the bus
23 converters were used in a way that infringes. But that
24 does not say that we were compensated on all of them or
25 that all of them were in the damages base. They